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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEONARDO ESTRADA,

 Petitioner,

 v.

BRIAN CATES, Warden,

 Respondent.

No. 1:21-cv-00473-NONE-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, SUMMARILY
DISMISSING PETITION FOR WRIT OF
HABEAS CORPUS, DIRECTING CLERK OF
COURT TO ASSIGN DISTRICT JUDGE
AND CLOSE CASE, AND DECLINING TO
ISSUE CERTIFICATE OF APPEALABILITY

(Doc. No. 5)

Petitioner Leonardo Estrada is a state prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 24, 2021, the assigned magistrate judge issued findings and recommendations recommending that the petition be summarily dismissed. (Doc. No. 5.) Those findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within thirty (30) days after service. (*Id.* at 4.) On April 26, 2021, petitioner filed objections to the findings and recommendations. (Doc. No. 7.)

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
2 *de novo* review of the case. In his objections, petitioner argues that he was not allowed to present
3 documentary evidence in his defense at his prison disciplinary hearing, specifically “the
4 photograph of the image [the officer] view[ed] on the cell phone.”¹ (*Id.* at 2.) According to
5 petitioner, that image “would have prove[d] or disprove[d] the facts in [the rules violation
6 report].” (*Id.*) Ultimately, petitioner argues that there was no evidence of guilt presented at his
7 prison disciplinary hearing. Petitioner claims that the rules violation report and the reporting
8 correctional officer’s testimony did not constitute any evidence, and that the presiding Senior
9 Hearing Officer (“SHO”) could have viewed the phone’s contents himself rather than relying only
10 on the officer’s testimony.

11 Petitioner’s arguments regarding the quality or strength of the evidence upon which his
12 disciplinary conviction was based are without merit. As correctly noted in the pending findings
13 and recommendations, due process is satisfied if there is at least “some evidence” of guilt.
14 *Superintendent, Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 455 (1984). Here, the SHO “found
15 Petitioner’s defense was not credible in light of the picture on the phone, and that despite [his
16 cellmate] claiming ownership of the phone, it was located in a common area of the cell.” (Doc.
17 No. 5 at 3; *see also* Doc. No. 1 at 22.) Contrary to petitioner’s assertion, the officer’s testimony
18 and the rules violation report constitute “some evidence” of petitioner’s guilt. Had the hearing
19 officer also conducted a review of the cellphone images, this would perhaps have provided further
20 evidence of petitioner’s guilt, but there is no argument made by petitioner that such images did
21 not exist. Petitioner thus fails to show that there was not at least some evidence of his guilt
22 introduced at his prison disciplinary hearing.

23 Having carefully reviewed the entire file, including petitioner's objections, the court
24 concludes that the magistrate judge’s findings and recommendations are supported by the record
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27 ¹ To the extent that petitioner argues he was not allowed to present or was not provided with
28 photographs of the actual phone, as noted by the magistrate judge, no such photographs were
taken. (Doc. No. 5 at 3.)

1 and proper analysis. Petitioner's objections present no grounds for questioning the magistrate
2 judge's analysis.

3 In addition, the court declines to issue a certificate of appealability. A state prisoner
4 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of
5 his petition, and an appeal is only allowed in certain circumstances. 28 U.S.C. § 2253(a)-(c);
6 *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003). If a court denies a petitioner's petition, the
7 court may only issue a certificate of appealability when a petitioner makes a substantial showing
8 of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing,
9 the petitioner must establish that “reasonable jurists could debate whether (or, for that matter,
10 agree that) the petition should have been resolved in a different manner or that the issues
11 presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529
12 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

13 In the present case, the court finds that petitioner has not made the required substantial
14 showing of the denial of a constitutional right to justify the issuance of a certificate of
15 appealability. Reasonable jurists would not find the court's determination that petitioner is not
16 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
17 proceed further. Thus, the court declines to issue a certificate of appealability.

18 Accordingly,

- 19 1. The findings and recommendations issued on March 24, 2021 (Doc. No. 5), are
20 adopted in full;
- 21 2. The petition for writ of habeas corpus (Doc. No. 1) is dismissed with prejudice;
- 22 3. The Clerk of the Court is directed to assign a district judge to this case for the
23 purpose of closing the case and then to enter judgment and close the case; and
- 24 4. The court declines to issue a certificate of appealability.

25 IT IS SO ORDERED.

26 Dated: May 28, 2021

27 
UNITED STATES DISTRICT JUDGE